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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,655	10/08/2003	Brian Yen	51861.00009	8257

30256 7590 01/23/2007  
SQUIRE, SANDERS & DEMPSEY L.L.P  
PATENT DEPARTMENT  
ONE MARITIME PLAZA, SUITE 300  
SAN FRANCISCO, CA 94111-3492

EXAMINER
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WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
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3768

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/23/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/682,655	Applicant(s) YEN, BRIAN	
	Examiner Eric F. Winakur	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2006.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-9,12-19 and 22-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-8,12-18 and 22-37 is/are rejected.
- 7) ☒ Claim(s) 9 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/9/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 7, 8, 12 - 18, and 22 - 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanaka. Tanaka teaches a measurement apparatus and method (Figures 2 - 4 and the description of column 3, line 63 - column 8, line 39) that detects a blood vessel in a subject's eye, emits radiation onto the detected blood vessel and collects radiation reflected therefrom, and determines a blood flow characteristic by analyzing the collected radiation. The results are provided on a display. Further, the arrangement includes the ability to track the blood vessel (column 7, line 3 - column 8, line 39). Measurements are performed with a laser light source (single wavelength emitter). As coagulation and ablation are dependent not merely upon the wavelength emitted by a light source, but also, at least the signal intensity and targeted tissue, the light output by the laser light source of Tanaka is considered to be at a wavelength that is capable of being used for ablation or coagulation dependent upon choice of intensity,

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target tissue, etc. Therefore, without more particularly specifying structural details, Tanaka is considered to meet all of the limitations of claims 26, 27, 30, 31, 34, and 35.

3. Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacot et al. Jacot et al. teach a method of determining a characteristic of blood that includes imaging a blood vessel of an eye via a retinal viewing device, emitting near-infrared radiation onto the detected blood vessel, collecting reflected radiation (9, 10), and analyzing and displaying results of measurement of the detected light (column 2, lines 34 - 58; column 3, lines 4 - 43).

4. Claims 1, 2, 25 - 28, and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Lambert et al. Lambert et al. (Figure 19) teaches a method that includes detecting a blood vessel on the conjunctiva of a subject's eye, emitting radiation onto the blood vessel, collecting and analyzing radiation returned therefrom, and displaying results related to blood glucose levels. The arrangement of Lambert et al. includes a laser for emitting monochromatic radiation to the subject. As coagulation and ablation are dependent not merely upon the wavelength emitted by a light source, but also, at least the signal intensity and targeted tissue, the light output by the laser light source of Tanaka is considered to be at a wavelength that is capable of being used for ablation or coagulation dependent upon choice of intensity, target tissue, etc. Therefore, without more particularly specifying structural details, Lambert et al. is considered to meet all of the limitations of claims 26 and 27.

***Allowable Subject Matter***

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5. The following is a statement of reasons for the indication of allowable subject matter: Tsukada teach a fundus blood flow metering method that is similar to that of Tanaka. The prior art does not teach or suggest either an apparatus that includes electronics or a system that includes a radiation directing engine, feedback engine, and analysis engine wherein the elements identify a blood vessel of an eye, adjust a radiation directing device to direct a radiation onto the identified blood vessel and determine blood glucose levels from reflected radiation data, in combination with the other elements.

6. Claims 9 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571/272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Eric F Winakur  
Primary Examiner  
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